



**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

PTI/150082

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**PRELIMINARY RECITALS**

Pursuant to a petition filed June 17, 2013, under Wis. Admin. Code, §DCF 201.07(1) to review a decision by the Public Assistance Collection Unit (PACU) to utilize a tax intercept to recover a child care provider overpayment, a hearing was held on August 20, 2013, by telephone.

The issue for determination is whether the PACU can use a tax intercept to recover an overpayment paid to a child care provider.

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Children and Families  
201 East Washington Avenue  
Madison, Wisconsin 53703

By: Written case summary

**ADMINISTRATIVE LAW JUDGE:**

Brian C. Schneider  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Green County.
2. Until 2008 petitioner was listed as the president of [REDACTED], a child care provider.
3. On September 8, 2008, Brown County Human Services notified [REDACTED] that it was adjusted, *i.e.* overpaid, \$97.40 due to having a child appear for two weeks with zero hours in August, 2008. The amount was never repaid.

4. In 2012 the PACU sent recovery notices to ██████████ seeking payment of the \$97.40. The notices were sent to the address in the state files, but ██████████ closed in 2008. The notices were not received.
5. On May 17, 2013, the PACU sent petitioner a notice to her home address telling her that it intended to intercept her tax refund to recover the \$97.40, and petitioner filed this appeal.

### DISCUSSION

Wis. Stat., §49.85(2)(b), provides that the department shall, at least annually, certify to the Department of Revenue the amounts that it has determined that it may recover resulting from overpayments of AFDC and child care assistance.

The Department of Children and Families must notify the person that it intends to certify the overpayment to the Department of Revenue for setoff from his/her state income tax refund and must inform the person that he/she may appeal the decision by requesting a hearing. *Id.* at §49.85(3)(b).

The hearing right is described in Wis. Stat., §49.85(4)(b), as follows:

If a person has requested a hearing under this subsection, the department ... shall hold a contested case hearing under s. 227.44, except that the department ... may limit the scope of the hearing to exclude issues that were presented at a prior hearing or that could have been presented at a prior opportunity for hearing.

The Department is required to recover all overpayments of public assistance benefits including those made to child care providers. Wis. Stat., §49.195(3). Petitioner argues that she is not the debtor because she was just an officer in a corporation. Wis. Stat., §49.155(7m) provides:

(a) The department shall by rule establish policies and procedures permitting the department to do all of the following if a child care provider submits false, misleading, or irregular information to the department or if a child care provider fails to comply with the terms of the program under this section and fails to provide to the satisfaction of the department an explanation for the noncompliance:

1. Recoup payments made to the child care provider.
2. Withhold payments to be made to the child care provider.
3. Impose a forfeiture on the child care provider.

(b) The penalties under par. (a) may be imposed on any child care provider subject to this section. *Any officer, director, or employee of a child care provider that is a corporation, and any member, manager, or employee of a child care provider that is a limited liability company, who holds at least 20 percent of the ownership interest of the corporation or limited liability company and who has control or supervision of or responsibility for operating the child care business, including reporting for and receipt of payments under this section, may be found personally liable for such amounts, including overpayments made under this section, if the business, corporation, or limited liability company is unable to pay such amounts to the department.* Ownership interest of a corporation or limited liability company includes ownership or control, directly or indirectly, by legally enforceable means or otherwise, by the individual, by the individual's spouse or child, by the individual's parent if the individual is under age 18, or by a combination of 2 or more of them, and such ownership interest of a parent corporation or limited liability company of which the corporation or limited liability

company unable to pay such amounts is a wholly owned subsidiary. The personal liability of the officers, directors, and employees of a corporation and of the members, managers, and employees of a limited liability company as provided in this paragraph is an independent obligation and survives dissolution, reorganization, bankruptcy, receivership, assignment for the benefit of creditors, judicially confirmed extension or composition, or any analogous situation of the corporation or limited liability company.

*Italics added.* In a final decision in consolidated case nos. PTI/132478 and PTI/133922 dated December 29, 2011, the Department's Executive Assistance concluded that the statute gave the Department the authority to impose personal liability on a corporate owner, with the key phrase being the one in italics. If petitioner thus is personally liable for the business overpayment, then the Department can utilize a tax intercept described in Wis. Stat., §49.195(3).

Petitioner questioned why the \$97.40 was even recovered. The agency cited to the Child Day Care Manual, §3.1.7, for the policy: "If a second consecutive week of zero hour attendance on an Enrollment Based authorization is entered after payment has been made for the first week of zero hour attendance, no payment will be made for that week of attendance and a negative adjustment will be created by CSAW for the first week of zero hour attendance." The Manual provision is dated June 8, 2012. I checked into the history and found that the policy was first implemented effective February 26, 2006. See BEM/DWS Operations Memo no. 06-01 dated January 3, 2006.

The result is that the agency correctly sought recovery of the \$97.40, and because petitioner was an officer in the corporate entity she can be held liable.

### **CONCLUSIONS OF LAW**

Petitioner is liable for a child care provider overpayment because she was a corporate officer in the entity when it was overpaid.

**THEREFORE, it is**

**ORDERED**

That the petition for review herein be and the same is hereby dismissed.

### **REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

**APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Children and Families. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 201 East Washington Avenue, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Madison,  
Wisconsin, this 23rd day of August, 2013

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\sBrian C. Schneider  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin \DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on August 23, 2013.

Brown County Human Services  
Public Assistance Collection Unit